

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: PETER J. REFFINO

Examiner: Green, Brian

Serial No.: 10/605,629

Group Art Unit: 3611

Filed: October 15, 2003

For: LOTTERY CARD READER

Commissioner for Patents  
Alexandria, VA 22313-1450

BRIEF OF APPELLANT

Sir:

This is an appeal from the Final Rejection of the Examiner dated September 28, 2005, rejecting Claims 1 to 20.

(i) Real Party In Interest

The real party in interest is the inventor, Peter J. Ruffino.

(ii) Related Appeals and Interferences

01/06/2006 BABRAHA1 00000023 10605629

02 FC:2402

250.00 OP

There are no related appeals or interferences.

(iii) Status of Claims

Claims 1 to 20 were filed with the application.

Claims 1 to 20 were rejected and are appealed.

Claims 9 and 16 were indicated as being allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, and to include all of the limitations of the base claim and any intervening claims.

(iv) Status of Amendments

An amendment was submitted after the Final Rejection and was entered.

(v) Summary of claimed subject matter

Claims 1, 11, and 18 are independent claims and Claim 10 is separately argued.

Claim 1

Referring to Figures 4 to 10, Claim 1 is for a lottery card reader (number 3) having two parts, a clip (number 4) and a transparent flap (number 5).

(Paragraph [0021], lines 1 and 2) The clip has three parts:

- (1) a first molded piece of plastic (number 17) having a clasping arm (number 23), a gripping arm (number 22), and a fulcrum (the portion of piece 17 that contacts means 20) therebetween; (Paragraph [0021], lines 3 to 7)

(2) a second molded piece of plastic (number 18) having a clasping arm (number 23), a gripping arm (number 22), a fulcrum (the portion of means 20 that contacts first piece 17) therebetween that engages the fulcrum of the first molded piece of plastic, and a resilient member (spring 25) that extends from the second molded piece of plastic (number 18) and contacts the first molded piece of plastic (number 17); (Paragraph [0021], lines 3 to 7) and

(3) molded plastic means (number 20) extending from one of the molded pieces of plastic for attaching the first molded piece of plastic to the second molded piece of plastic (Paragraph [0021], lines 3 to 5) so that the clasping arm (number 23) of the first molded piece of plastic opposes the clasping arm (number 23) of the second molded piece of plastic and the gripping arm (number 22) of the first molded piece of plastic opposes the gripping arm (number 22) of the second molded piece of plastic, (Paragraph [0021], lines 6 and 7) and the resilient member (number 25) resiliently forces the clasping arms together and the gripping arms apart. (Paragraph [0021], lines 8 to 10)

A single transparent flap (number 5) is attached to the clip (number 4) and covers games on a lottery card (number 24) to which the clip is attached. (Paragraph [0021], lines 10 to 14) A lottery card (number 24) inserted between the clasping arms (number 22) under the transparent flap (number 5) is releaseably gripped by the clasping

arms (number 22). (Paragraph [0021], line 16 and Paragraph [0019], lines 1 to 4)

Referring to Figure 4, Claim 10 depends from Claim 1, but additionally requires one of the clasping arms (number 17) must have two parts (each numbered 23) that extend over only the ends of the transparent flap (number 28), leaving the middle of the transparent flap exposed (Paragraph [0021], lines 5 to 8).

#### **Claim 11**

Claim 11 is similar to Claim 1, but uses the language “consisting essentially of” instead of “comprising.” Also, part (3) is limited to a pair of arms (number 20) that extend from one of the molded pieces of plastic and snap into indentations (number 19) on the other of the molded pieces of plastic. (Paragraph [0021], lines 3 to 7 and 14) The transparent sheet (number 5) is also required to be unfolded. (Paragraph [0021], line 11)

#### **Claim 18**

Claim 18 is similar to Claim 11, but also requires the transparent flap (number 5) to be about 3 to about 4 inches long by about 1¾ to about 2 inches wide (Paragraph [0017], lines 7 to 9) and to have a vertical reference line (number 30) printed on it. (Paragraph [0017], lines 9 and 10 and Paragraph [0021], lines 14 to 16)

(vi) Grounds of rejection to be reviewed on appeal

I. Claims 1 to 6, 10 to 14, 18, and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter in view of Brown.

II. Claims 7 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter in view of Brown as applied to Claims 1 and 11 above and further in view of Hull et al. ("Hull").

III. Claims 8, 17, and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter in view of Brown as applied to Claims 1, 11, and 18 and further in view of Cross et al. ("Cross").

(vii) Argument

**I. Rejection under 35 U.S.C. 103(a) over U.S. Patent No. 5,308,034 (Hunter) in view of U.S. Patent No. 5,301,393 (Brown)**

**Claims 1 to 6, 10 to 14, 18, and 19**

Appellant amended his claims to distinguish over Hunter. All of Appellant's claims now require that the two pieces that form the clip must be molded plastic. Hunter's pieces are made of metal. Metal is too expensive for Appellant's use and the spring (resilient portion) cannot be made of the same metal as the rest of the clip as spring metal is different from the rigid metal that would be used for the rest of the clip. With plastic, both the spring and the rest of the clip be molded at the same time using the same type of plastic.

All of Appellant's claims further require that the means for attaching the two pieces of molded plastic together to form the clip must extend from one of the two pieces of molded plastic from which the clip is formed (so that it is molded with one of

the pieces). There is nothing in Hunter that discloses or suggests an extension from one of his metal pieces that attaches to the other of his metal pieces to hold the clip together. Rather, Hunter employs a pivot axle 74 to hold the metal pieces together. Pivot axle 74 is not part of either of Hunter's two metal pieces that form his clip and it does not extend from either of those two metal pieces. Rather, it is a separate metal rod that must be inserted into holes. It is not obvious to modify Hunter so that one of his metal pieces clips directly onto the other of his metal pieces in order to hold the clip together because that would require extensive modifications and the elimination of his pivot axle 74 and his means for holding it.

Brown was cited to show a clip made from molded plastic. However, no transparent flap is attached to Brown's clip, as required by all of Appellant's claims. The Examiner argues that it would be obvious "to modify Hunter by making the clip from two pieces which snap" as shown by Brown. Appellant does not agree. Brown's clip does not have "a pair of panel-like members" attached to the clip, as Hunter does. Brown's clip is molded plastic and it is not obvious how to attach a molded plastic clip to Hunter's two panel-like members.

Moreover, even if Hunter were modified with Brown's clip, the resulting structure still would not fall within the scope of Appellant's claims. First, Appellant's claims require a transparent "flap." A "flap" is a sheet that can flap, that is, that can flex and bend. Webster's Ninth New Collegiate Dictionary defines a "flap" as "something that is broad, limber, or flat and usually thin and that hangs loose or projects freely." Hunter uses what he calls "panels," which are clearly rigid so as to provide a support for writing on. Webster's Ninth New Collegiate Dictionary defines a "panel" as "a thin usually

rectangular board set in a frame (as in a door)” or as “a flat usually rectangular piece of construction material (as plywood or precast masonry) made to form part of a surface.” Hunter does not disclose a flap and it would not be obvious to use a flap in Hunter because then there would be no rigid surface to write on.

Appellant’s claims also require a single transparent flap. Hunter uses two panels, which may be transparent. It is not obvious to use only a single panel in Hunter because Hunter wants to be able to hold a paper between the two panels. (See Abstract.)

For those reasons, it is not obvious to modify Hunter using Brown’s clip.

#### **Claim 10**

As to Claim 10, the clasps on the top of the lottery card reader is two separated parts so as to expose the portion of the lottery card that is in between. Neither Hunter nor Brown show this feature, so the combination of Hunter and Brown would not render Claim 10 obvious and Claim 10 does not stand or fall with the other claims in this rejection.

**II. Rejection under 35 U.S.C. 103(a) over U.S. Patent No. 5,308,034 (Hunter) in view of U.S. Patent No. 5,301,393 (Brown) as applied to Claims 1 and 11 above and further in view of U.S. Patent No. 5,647,156 (Hull et al., “Hull”)**

#### **Claims 7 and 15**

Hunter and Brown have been discussed. Hull was cited to show a transparent holder that includes indicia printed on a sheet, but is not otherwise relevant. It would

not be obvious to print indicia on Hunter's panels because Hunter is making a clipboard for general use and any permanent indicia would limit its use to a particular application.

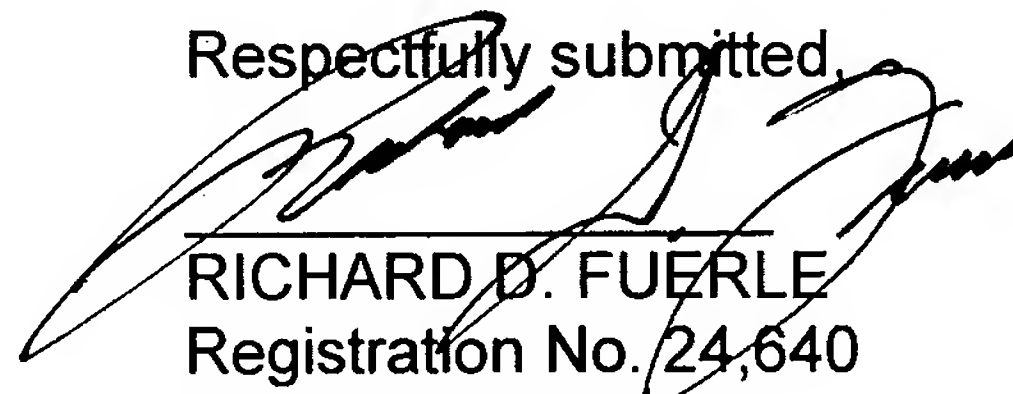
**III. Rejection under 35 U.S.C. 103(a) over U.S. Patent No. 5,308,034 (Hunter) in view of U.S. Patent No. 5,301,393 (Brown) as applied to Claims 1, 11, and 18 and further in view of U.S. Patent No. D303,401 (Cross et al., "Cross")**

**Claims 8, 17, and 20**

Hunter and Brown have been discussed. Cross was cited to show "the idea of attaching a lottery ticket to a clip board." However, Cross does not show a transparent flap (nor does he show other features claimed by Appellant). Thus, since Hunter does not show using only a single transparent flap, this combination would still not fall within the scope of Appellant's claims.

For these reasons, it is submitted that Appellants' invention is not obvious over the references cited. The Board is therefore requested to reverse the Examiner and allow Claims 1 to 20.

Respectfully submitted,



RICHARD D. FUERLE  
Registration No. 24,640  
For Appellant

Richard D. Fuerle  
1711 West River Road  
Grand Island, NY 14072  
(716)-774-0091  
CASE PR02CIP  
December 26, 2005



(vii) Claims Appendix

1. A lottery card reader comprising

(A) a clip having

- (1) a first molded piece of plastic having a clasping arm, a gripping arm and a fulcrum therebetween;
- (2) a second molded piece of plastic having a clasping arm, a gripping arm, a fulcrum therebetween that engages the fulcrum of said first molded piece of plastic, and having a resilient member that extends from said second molded piece of plastic and contacts said first molded piece of plastic;
- (3) molded plastic means extending from one of said molded pieces of plastic for attaching said first molded piece of plastic to said second molded piece of plastic so that the clasping arm of said first molded piece of plastic opposes the clasping arm of said second molded piece of plastic and the gripping arm of said first molded piece of plastic opposes the gripping arm of said second molded piece of plastic, and said resilient member resiliently forces said clasping arms towards each other and said gripping arms apart; and

(B) a single transparent flap attached to said clip that can cover games on a lottery card to which said clip is attached, whereby a lottery card inserted between said clasping arms under said transparent flap is releaseably gripped by said clasping arms.

2. A lottery card reader according to Claim 1 wherein said first molded piece and said second molded piece snap together.

3. A lottery card reader according to Claim 1 wherein said transparent flap is a single, unfolded sheet.
4. A lottery card reader according to Claim 2 wherein one of said molded pieces has a pair of arms that snap onto the other of said molded pieces.
5. A lottery card reader according to Claim 1 wherein said transparent flap can be eraseably written on in ink.
6. A lottery card reader according to Claim 1 wherein said transparent flap is about 3 to about 4 inches long and about 1¾ to about 2 inches wide.
7. A lottery card reader according to Claim 1 wherein a vertical reference mark is printed on said transparent flap.
8. A lottery card reading assembly comprising (A) a lottery card and (B) a lottery reader according to Claim 1 attached thereto.
9. A lottery card reading assembly comprising (A) a lottery card reader according to Claim 1 and (B) an envelope in which said lottery card can be placed, where a table is printed on said envelope, said table having spaces therein for inserting information about each of a multiplicity of lottery cards.
10. A lottery card reader according to Claim 1 wherein the clasping arm of one of said molded pieces of plastic comprises two parts that extend over only the

ends of said transparent flap, leaving the middle of said transparent flap exposed.

11. A lottery card reader comprising

(A) a clip consisting essentially of

- (1) a first molded piece of plastic having a clasping arm, a gripping arm and a fulcrum therebetween;
  - (2) a second molded piece of plastic having a clasping arm, a gripping arm, a fulcrum therebetween that engages the fulcrum of said first molded piece of plastic, and having a resilient member that extends from said second molded piece of plastic and contacts said first molded piece of plastic;
  - (3) means for attaching said first molded piece of plastic to said second molded piece of plastic so that the clasping arm of said first molded piece of plastic opposes the clasping arm of said second molded piece of plastic and the gripping arm of said first molded piece of plastic opposes the gripping arm of said second molded piece of plastic, and said resilient member resiliently forces said clasping arms towards each other and said gripping arms apart, said means comprising a pair of arms that extend from one of said molded pieces of plastic that snap into indentations on the other of said molded pieces of plastic; and
- (B) a transparent flap that is a single, unfolded sheet attached to said clip that can cover games on a lottery card to which said clip is attached, whereby a lottery card inserted between said clasping arms under said transparent flap is releaseably gripped by said clasping arms.

12. A lottery card reader according to Claim 11 wherein the clasping arm of one of said molded pieces of plastic comprises two parts that extend over only the ends of said transparent flap, leaving the middle of said transparent flap exposed.
13. A lottery card reader according to Claim 11 wherein said transparent flap can be erasably written on in ink.
14. A lottery card reader according to Claim 11 wherein said transparent flap is about 3 to about 4 inches long and about 1¾ to about 2 inches wide.
15. A lottery card reader according to Claim 11 wherein a vertical reference mark is printed on said transparent flap.
16. A lottery card reading assembly comprising (A) an envelope upon which is printed a table having spaces therein for inserting information about each of a multiplicity of lottery cards and (B) a lottery card reader according to Claim 11 clipped thereto.

17. A lottery card reading assembly comprising (A) a lottery card and (B) a lottery reader according to Claim 11 attached thereto.
18. A lottery card reader comprising
- (A) a clip consisting essentially of
- (1) a first molded piece of plastic having a clasping arm, a gripping arm and a fulcrum therebetween;
  - (2) a second molded piece of plastic having a clasping arm, a gripping arm, a fulcrum therebetween that engages the fulcrum of said first molded piece of plastic, and having a resilient member that extends from said second molded piece of plastic and contacts said first molded piece of plastic;
  - (3) means for attaching said first molded piece of plastic to said second molded piece of plastic so that the clasping arm of said first molded piece of plastic opposes the clasping arm of said second molded piece of plastic and the gripping arm of said first molded piece of plastic opposes the gripping arm of said second molded piece of plastic, and said resilient member resiliently forces said clasping arms together and said gripping arms apart, said means comprising a pair of arms that extend from one of said molded pieces of plastic at said pivot point, that snap into indentations on the other of said molded pieces of plastic; and
- (B) a rectangular transparent flap that is a single, unfolded sheet about 3 to about 4 inches long by about 1¾ to about 2 inches wide having a vertical reference line printed thereon, attached to said clip which can cover games on a lottery card to which said clip is attached, wherein

the clasping arm of one of said molded pieces of plastic comprises two parts that extend over only the ends of said transparent flap, leaving the middle of said transparent flap exposed, whereby a lottery card inserted between said second pair of arms under said transparent flap is releaseably gripped by said second pair of arms.

19. A lottery card reader according to Claim 18 wherein said transparent flap can be  
eraseably written on in ink.
20. A lottery card reading assembly comprising (A) a lottery card and (B) a lottery reader according to Claim 18 attached thereto.

(ix) Evidence appendix

None

(x) Related proceedings appendix

None